

INDEX

	Page
Record from the United States District Court for the Southern District of Mississippi, Jackson Division:	
Caption.....	3
Stipulation as to printing of record.....	4
Indictment.....	7
Motion to dismiss.....	11
Additional motion to dismiss.....	11
Stipulation as to accuracy of transcript of testimony.....	13
Order dismissing indictment.....	14
Opinion sustaining motions to dismiss.....	14
Notice of appeal.....	16
Clerk's certificate.....	18
Proceedings in the U. S. C. A. for the Fifth Circuit.....	19
Argument and submission.....	19
Opinion, Borah, J. (See Record No. 51, page 17.)	
Dissenting opinion, Rives, J. (See Record No. 51, page 22.)	
Judgment.....	19
Clerk's certificate.....	19
Order granting certiorari.....	21

1901

THE
OFFICE OF THE
SHERIFF
COUNTY OF
SHERBORN
MASS.
IN
REPLY
TO
YOUR
LETTER
OF
THE
10TH
INST.
IN
REPLY
TO
YOUR
LETTER
OF
THE
10TH
INST.
IN
REPLY
TO
YOUR
LETTER
OF
THE
10TH
INST.

1

NO. _____

**IN THE UNITED STATES
COURT OF APPEALS FOR THE FIFTH CIRCUIT
NEW ORLEANS, LOUISIANA**

UNITED STATES OF AMERICA, Appellant

vs

JAMES H. WILKINSON, Appellee

**ON APPEAL FROM THE UNITED STATES DISTRICT
COURT FOR THE SOUTHERN DISTRICT OF
MISSISSIPPI—JACKSON DIVISION**

MEMORANDA FOR THE CLERK
IN THE UNITED STATES
DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

No. 2166—CRIMINAL

UNITED STATES OF AMERICA

v

JAMES H. WILKINSON

HONORABLE JOSEPH E. BROWN, United States
Attorney, Federal Building, Jackson, Mis-
issippi,

ATTORNEY FOR APPELLANT

HONORABLE ALLAN T. EDWARDS, Attorney at
Law, 236 West Capitol Street, Jackson, Mis-
issippi,

ATTORNEY FOR APPELLEE

**IN THE UNITED STATES
COURT OF APPEALS
FOR THE FIFTH CIRCUIT**

NO. 14088

UNITED STATES OF AMERICA, Appellant

vs.

JAMES H. WILKINSON, Appellee

STIPULATION AS TO PRINTING OF RECORD

Subject to the approval of the court, it is hereby stipulated and agreed by and between counsel for the parties that only the following portions of the record on appeal received from the Clerk of the District Court need be printed, supplemented by this agreement:

1. The indictment.
2. The motion to dismiss, without exhibits. (Record, Page 8).
3. Additional motion to dismiss, without exhibits. (Record, Page 9).
4. Stipulation of counsel as to accuracy of exhibit to motion. (Record, Page 12).
5. It is agreed that the typewritten record certified by the Clerk of the District Court constitutes the record on appeal and shall be considered by the court to the same extent as if it were printed; and that any party may print, as a part of or in connection with its or his brief, any portion of said typewritten record or may comment upon or otherwise use said

typewritten record to the same extent as if it were printed. This part of this agreement also applies to the exhibits to the motions.

6. The opinion of the District Court sustaining the motions to dismiss.
7. The order of the District Court dismissing the indictment.
8. The notice of appeal.
9. This stipulation.

/s/ Joseph E. Brown
JOSEPH E. BROWN
United States Attorney
Southern District of Mississippi
Attorney for Appellant

/s/ Allan T. Edwards.
ALLAN T. EDWARDS
Attorney for Appellee

**IN THE UNITED STATES
DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI**

No. 2166—CRIMINAL

UNITED STATES OF AMERICA, Plaintiff,

vs

JAMES H. WILKINSON, Defendant

(FILED JULY 19, 1951)

COUNT I

THE GRAND JURY CHARGES:

1. That on or about the 10th day of April, 1951, at Jackson, and within the Southern District of Mississippi,

JAMES H. WILKINSON,

the defendant herein, having duly taken an oath before a competent tribunal, to wit, a subcommittee of the Senate Committee on Expenditures in the Executive Departments, known as the Investigations Subcommittee, a duly created and authorized subcommittee of the United States Senate conducting official hearings in the Southern District of Mississippi, and inquiring in a matter then and there pending before the said subcommittee in which a law of the United States authorizes that an oath be administered, that he would testify truly, did unlawfully, knowingly and willfully and contrary to said oath, state a material matter which he did not believe to be true, that is to say:

2. That at the time and place aforesaid, the said Senate Subcommittee inquiring as aforesaid was conducting a study

and investigation of whether applicants for appointments to offices and places under the government of the United States had been and were being solicited and required by numerous persons within the State of Mississippi to make contributions and donations as a consideration precedent to receiving such appointments, and as a consideration in return for promises to use their support and influence in obtaining said offices and places for applicants seeking appointments thereto; and to determine whether the laws of the United States had been violated in connection with such activities, the identity of any such persons engaged therein, and the extent to which such improper and corrupt activities affected or influenced the operation of agencies and departments of the United States.

3. That at the time and place aforesaid, the defendant

JAMES H. WILKINSON,

duly appearing as a witness before the Senate Subcommittee and then and there being under oath as aforesaid, testified falsely before said Subcommittee with respect to the aforesaid material matter as follows:

SENATOR HOEY: All these people you contacted whom I mentioned, they were selected as managers for their counties?

MR. WILKINSON: Selected for what?

SENATOR HOEY: Or Chairman, or whatever you call them.

MR. WILKINSON: No, there wasn't any chairmen, or anything at all. They were written a letter saying that the committee appreciated the work that they were willing to do.

4. That the aforesaid testimony of the defendant as he then and there well knew and believed was untrue in that the persons whom he contacted with reference to making donations and contributions to the Mississippi Democratic Committee were to be selected and recognized as the chairmen and managers for their counties. (Sec. 1621, Title 18, U. S. C.)

COUNT II**THE GRAND JURY FURTHER CHARGES:**

1. That at the time and place aforesaid, as is more fully set forth in Paragraphs 1 and 2 of the first Count, the allegations of which are hereby incorporated herein, the defendant

JAMES H. WILKINSON,

duly appeared as a witness before the said Senate Subcommittee and being under oath as aforesaid, testified falsely before the said Senate Subcommittee with respect to the aforesaid material matter as follows:

SENATOR HOEY: You just got one person in a place?

MR. WILKINSON: That is true, but there aren't any chairmanships.

SENATOR HOEY: He was something there.

MR. WILKINSON: Well, he was, but he was a person trying to work for the furtherance of the Mississippi Democratic Committee or Party.

SENATOR HOEY: He had some official standing because you just selected one for a county.

MR. WILKINSON: No, he did not have an official standing at all.

2. That the aforesaid testimony of the defendant, as he then and there well knew and believed, was untrue in that the persons contacted by the defendant in the various counties, and who were to make contributions to and do work for the Mississippi Democratic Committee, were to be recognized by the Mississippi Democratic Committee as having an official standing in the form of County Chairmen for their respective counties. (Section 1621, Title 18, U. S. C.)

COUNT III**THE GRAND JURY FURTHER CHARGES:**

1. That at the time and place aforesaid, as is more fully set forth in Paragraphs 1 and 2 of the first Count, the allegations of which are hereby incorporated herein, the defendant

JAMES H. WILKINSON,

duly appearing as a witness before the said Senate Subcommittee and being under oath as aforesaid, testified falsely before the said Senate Subcommittee with respect to the aforesaid material matter as follows:

SENATOR HOEY: Now, in your efforts to build up the party, did you make one of the prime purposes getting contributions from men who would be managers in the different counties?

MR. WILKINSON: That was not one of the prime purposes at any time.—It looks like I was a piker from what I have been hearing here, because the fellows I talked with at all about contributions were in small terms. Most of them ran from \$50, \$100, and \$150, along in there, the people who did give me contributions.

2. That the aforesaid testimony of the defendant, as he then and there well knew and believed, was untrue in that the defendant did, as a representative of the Mississippi Democratic Committee, make it one of his prime purposes the getting of contributions from men who would be named managers in the different counties. (Sec. 1621, Title 18, U. S. C.)

A TRUE BILL,
/s/ D. F. McCormick
Foreman

/s/ Joseph E. Brown
JOSEPH E. BROWN
United States Attorney
/s/ Ben Brooks

BEN BROOKS
Special Assistant to the
Attorney General

(TITLE OMITTED)

MOTION

(FILED SEPTEMBER 5, 1951)

The defendant moves that the indictment be dismissed on the following grounds:

The indictment does not state facts sufficient to constitute an offence against the United States for the reason that the statements of defendant that are alleged to be false in counts one, two and three are not material matter in that according to each count they refer to the organization of the Mississippi Democratic Committee or Party at the county level, or contributions to the Mississippi Democratic Committee or Party by prospective county political chairmen; while the tribunal before which the alleged false statements were made was, according to the indictment, created and authorized to conduct a study and investigation to determine whether or not Section 215, Title 18, United States Code was being violated and the extent to which such violations affected or influenced agencies or departments of the United States.

/s/ James H. Wilkinson by
Allan T. Edwards, Atty

I, Allan T. Edwards, attorney for the defendant, certify that I have this day served a true copy of this motion on Joseph E. Brown, United States Attorney.

Certified this the 5th day of September, 1951.

/s/ Allan T. Edwards

(TITLE OMITTED)

MOTION

(FILED SEPTEMBER 13, 1951)

The defendant move that the indictment be dismissed on the following grounds:

1. Proof of criminal intent and knowledge of falsity are impossible.

The three counts of this indictment are based on statements or questions of the examiner and responses of the defendant, which are taken from a complete examination reported in approximately 12 printed pages.

The counts are laid in reverse order to the extent that the statements in the 3rd count were made first, the statements in the 1st count were made second and the statements in the 2nd count were made last, although all relate to the same general subject; the organization of the Democratic party at the county level.

A reading of the testimony, a copy of which is hereto attached, will reveal that the three statements were taken from a complete examination on the subject; and a reading of all answers to questions related to the propositions delineated in the indictment will reveal the impossibility of proving criminal intent on the part of defendant to swear falsely for the following reasons:

a) The answers given, and alleged to be false, were with reference to propositions susceptible of different interpretations as to meaning. The full text reveals a disagreement between the witness and the examiner.

b) In connection with the statements made in answer to previous and following consecutive questions, full explanation was made and full information given with respect to all facts relating to the excerpted statements alleged to be false.

Careful reading of the record of testimony will reveal considerable argument between the examiner and the witness with respect to these particular points and others and will further reveal that the witness was frequently required to respond to statements rather than to questions. The statements and questions frequently contained principal and subordinate propositions so phrased as to gain an unintentional admission of fact while purporting to seek only the answer to the principal proposition. Frequently questions were put to this witness before he could complete his answer to the preceding one. The witness complained on one occasion of coercion. All these things taken together.

indicate without doubt that the method of the examiner was such that it excited the witness.

2. Since the alleged false statements are in the nature of construction or interpretation and nomenclature, it will be impossible for the prosecuting authority to prove the falsity except by a different construction; and if that is proved it will be impossible to corroborate that construction by facts or circumstances, but possible if the court will admit in evidence a second interpretation in agreement with the first offered by the prosecuting authorities. In that event we will open the doors of the jail to all who are willing to swear to an opinion representing the minority view.

James H. Wilkinson

/s/ Allan T. Edwards

ALLAN T. EDWARDS, Attorney.

I, Allan T. Edwards, attorney for the defendant, certify that I have this day served a true copy of this motion on Joseph E. Brown, United States Attorney.

Certified this the 14th day of September, 1951.

/s/ Allan T. Edwards

(TITLE OMITTED)

STIPULATION

(Filed on September 13, 1951 together with the motion immediately foregoing)

Allan T. Edwards, attorney for the defendant, and Joseph E. Brown, United States attorney, stipulate that the attached transcript of the testimony of James H. Wilkinson is an accurate copy of the official report of the testimony before the Investigations Subcommittee of the Committee on Expenditures in the Executive Departments, United States Senate, Eighty-Second Congress, First Session, Pursuant to Senate Resolution 51 of the First Session of the Eighty-Second Congress, this the 14th day of September, 1951.

/s/ Allan T. Edwards

/s/ Ben Brooks

(TITLE OMITTED)

ORDER

(FILED FEBRUARY 11, 1952)

This cause this day came on for hearing on the motion to dismiss in the above numbered and entitled cause, and the Court having heard and considered same fully, it is considered and so

Ordered,

that the motion to dismiss in the above numbered and entitled cause be and the same hereby is dismissed.

ORDERED, this the 6th day of February, 1952.

/s/ Allen Cox

UNITED STATES DISTRICT JUDGE

ENTERED: COB 5—P 977

(TITLE OMITTED)

OPINION

(FILED FEBRUARY 11TH, 1952)

The indictments in these cases are identical in language insofar as the question before the Court is concerned and undertake to state cases against the various defendants under Section 1621, Title 18, United States Code.

In each of them it is stated "the defendant herein, having taken an oath before a competent tribunal, to-wit, a sub-committee of the Senate Committee on Expenditures in the Executive Departments, etc".

These indictments are challenged on many grounds which the Court is not now considering, and this decision is based on a ground common to them all, that is to say, the failure of the indictments to set out who administered the oath and by what authority he acted.

If this be an essential element of a good indictment under the Perjury Statute (Section 1621, Title 18, United States Code), then we need only cite the opinion of Hutcheson, Circuit Judge, in *Grimsley vs. United States*,

30 Fed. 2nd 500, in which he says: "Indictment without proof can not support a conviction, so proof without indictment can not."; and the case of *Sutton vs United States*, 157 Fed. 2nd 663 to 671, in which the Court of Appeals of the United States for the Fifth Circuit, speaking through Circuit Judge Holmes, makes it perfectly clear that no streamlining of pleading in criminal cases can ever authorize or justify the omission from an indictment of any essential element of the crime sought to be charged.

This then brings the Court to a consideration of the question as to whether or not it is essential to tell the defendant in a perjury charge clearly who administered the oath to him and by what authority.

In the case of *Hilliard vs United States*, 34 Fed. 2nd 89, Foster, Circuit Judge, speaking for the Court says, "In charging perjury it is sufficient, but it is also necessary to set forth the substance of the offense, and to show before whom the oath was taken, with the averment that the officer taking it had authority to administer it." (Emphasis added). It is true that here the Court was considering the question in the light of Rev. St. 5396 (18 U. S. C. A., Sec. 558) and the argument is made that since Congress did not bring this Section forward in the recodification, this is no longer binding nor sound law. With this I can not agree.

Almost from the beginning of the Republic, such a statute has been a part of our law and my thought is that in its enactment Congress was saying that no matter how many technical matters may be left out of an indictment for perjury, you must give the defendant the name and the authority of the person who administered the oath. I think this was merely the recognition by the legislative branch of the government of the justice of this and the necessity for it, if defendants were to have a fair chance to know what they were charged with.

This admonition of the Congress, seeking to safeguard the rights of citizens, should not be lightly cast aside by any United States prosecuting officer, nor by any Judge—this judgment and considered opinion of the Congress, made

up of laymen and of lawyers, carries great weight with me. I think they meant to say, and I think, that the language "Having duly taken an oath" is nothing but a conclusion of the pleader.

It is argued that by failing to bring this section forward in the recodification, Congress meant to abandon this. I think what they meant to say was that this principle is so thoroughly embedded in our law that it is not necessary longer to have it in the Statutes and make more cumbersome an already exceedingly large collection of Statutes.

It surely can not be argued that by failing to bring the Statute forward they meant to say it is no longer necessary to set out in the indictment that the matter was before a competent tribunal; that the matter sworn to was false, and that it was material. How then can it be said that the other necessary averment set out in the statute was intended to be no longer the law?

I think it is still the law. The motions to dismiss are sustained.

/s/ Allen Cox
 ALLEN COX, United States
 District Judge

(TITLE OMITTED)

NOTICE OF APPEAL

(FILED FEBRUARY 28TH, 1952)

The United States of America hereby appeals to the United States Court of Appeals for the Fifth Circuit from the order, decision and judgment of the United States District Court for the Southern District of Mississippi, Jackson Division, entered February 5, 1952, dismissing the indictment in this cause charging the defendant with violation of Title 18, Sec. 1621, United States Code, being an indictment charging the said defendant with perjury.

A copy of the Court's order dismissing the indictment and the opinion are hereto attached as Exhibits 1 and 2, respectively, and made a part hereof by reference.

This Notice of Appeal is prepared and given in accordance with Rule 37 of the Federal Rules of Criminal Procedure, and Title 18, Sec. 3731, United States Code.

Dated: February 23, 1952

/s/ Joseph E. Brown
JOSEPH E. BROWN,
United States Attorney,
Jackson, Mississippi

/s/ Robert E. Hauberg
ROBERT E. HAUBERG,
Assistant United States Attorney,
Jackson, Mississippi

/s/ Ben Brooks
BEN BROOKS
Special Assistant to the
Attorney General
Washington, D. C.

C E R T I F I C A T E

I, B. L. TODD, JR., CLERK of the United States District Court for the Southern District of Mississippi, do hereby certify that the foregoing pages contain a true and correct transcript of the record in the case of UNITED STATES OF AMERICA V JAMES H. WILKINSON, CRIMINAL ACTION NO. 2106, now on appeal to the Court of Appeals for the Fifth Circuit at New Orleans, Louisiana, as the same now remains of record in my office at Jackson, Mississippi.

Witness my hand and seal of this office, this the 29 day of April, 1953.

/s/ B. L. Todd, Jr.

B. L. TODD, JR., CLERK
UNITED STATES DISTRICT COURT
SOUTHER DISTRICT OF MISSISSIPPI

That the, after the following proceedings were had in said cause in the United States Court of Appeals for the Fifth Circuit, viz.:

Argument and Submission.

Extract from the Minutes of December 8, 1952.

UNITED STATES OF AMERICA,

No. 14088

versus

JAMES H. WILKINSON.

On this day this cause was called, and after argument by Ben Brooks, Esq., Special Assistant to the Attorney General, for appellant, and Ben F. Cameron, Esq., for appellee, was submitted to the Court.

Judgment.

Extract from the Minutes of April 10, 1953.

UNITED STATES OF AMERICA,

No. 14088

versus

JAMES H. WILKINSON.

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Mississippi, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

"Rives, Circuit Judge, dissents."

Clerk's Certificate.

UNITED STATES OF AMERICA,

UNITED STATES COURT OF APPEALS,

FIFTH CIRCUIT.

I, Oakley F. Dodd, Clerk of the United States Court of Appeals for the Fifth Circuit, do hereby certify that the pages numbered from 19 to 33 next preceding this certificate, contain full, true and complete copies of the pleadings, record entries and proceedings, including the opinion of the United States Court of Appeals for the Fifth Circuit, in a certain cause in said Court, numbered 14088,

wherein UNITED STATES OF AMERICA is appellant, and JAMES H. WILKINSON is appellee, as full, true and complete as the original of the same now remain in my office.

I further certify that the pages of the printed record numbers from 1 to 18 are identical with the printed record upon which said cause was heard and decided in the said Court of Appeals.

In testimony whereof, I hereunto subscribe my name and affix the seal of the said United States Court of Appeals at my office in the City of New Orleans, Louisiana, in the Fifth Circuit, this 21st day of April, A. D., 1953.

/s/ OAKLEY F. DODD,
Clerk, U. S. Court of Appeals,
Fifth Circuit.

SEAL

Supreme Court of the United States**No. 766, October Term, 1952****UNITED STATES OF AMERICA, PETITIONER****v.****JAMES H. WILKINSON***Order allowing certiorari***Filed June 15, 1953**

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.